

REMARKS

Claims 1, 2, 5-20 are pending. Claims 3-4 have been canceled. No claims have been withdrawn.

Support for the amendment to claim 1 is found in claims 3 and 4.

The present invention now requires a core made from a relatively stiff material (polyethylene, PEEK, ceramic or metal) and a shock absorbing component made from a relatively flexible material (an elastomer)

Claims 1,2,5-6,12-20 stand rejected under 35 USC 102 as being anticipated by US Patent No. 5,674,296 (Bryan).

Applicants respectfully traverse. Claim 1 now requires a core component made from a relatively stiff material (polyethylene, PEEK, ceramic or metal). In contrast, Bryan discloses a nuclear central portion 24 formed from a softer biocompatible elastomeric polymer of approximately 30 durometer hardness.(col. 4, lines 1- 5). Since Bryan does not disclose a core component made from a relatively stiff material (polyethylene, PEEK, ceramic or metal), the present anticipation rejection must be withdrawn.

Moreover, Applicants submit that the as-amended claims are unobvious over Bryan. Whereas the present invention has a relatively stiff core and a relatively flexible peripheral component, Bryan discloses the opposite:

To accomplish these objects, the invention comprises a resilient body formed of a material varying in stiffness from a relatively stiff exterior portion to a relatively supple central portion.(col. 2, lines 49-53) ... Here this vertebral disc endoprosthesis 18 comprises a resilient disc body 20 having a relatively stiff annular gasket exterior portion 22 and a relatively supple nuclear central portion 24. The annular gasket 22 can be formed from a suitable biocompatible elastomer of approximately 90 durometer hardness and the nuclear central portion 24 can be formed from a softer biocompatible elastomeric polymer of approximately 30 durometer hardness.(col. 3, line 65-col. 4, line 5)(emphasis supplied)

Since the present invention requires material selection that produces a stiff core and a flexible annulus, while Bryan teaches the use of the flexible core and a stiff

annulus, the skilled artisan would be dissuaded from modifying Bryan to arrive at the present invention.

Applicant notes that this unobvious distinction was discussed in the last Amendment in the context of claims 3 and 4.

Claims 3, 4 stand rejected under 35 USC 103 as being unpatentable over US Patent No. 5,674,296 (Bryan).

As these claims have been canceled, this rejection should be withdrawn.

Claims 7-9, 10, 11, 16 stand rejected under 35 USC 103 as being unpatentable over US Patent No. 5,674,296 (Bryan).

Applicants respectfully traverse. As each of these claims depend from claim 1, each of these claims require the materials selection for the core and shock-absorbing component as required in claim 1. Accordingly, this rejection should be withdrawn for the reasons provided above.

In addition, please provide any additional extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,



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